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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09658321	09/08/00	MUELLER	

EXAMINER

NGUYEN

ART UNIT

PAPER NUMBER

2872

DATE MAILED:

Please find below a communication from the SUPERVISORY EXAMINER in charge of this application.

Commissioner of Patents.

This is in response to a telephone conversation with Dan Lent regarding the abandonment of the instant applicant. Mr. Lent has requested Supervisory Review of the application and a reconsideration of the Holding of Abandonment based on Insufficiency of Reply (MPEP 711.03(a)) by the Examiner

A review of the record indicates that a Notice of Nonresponsive was mailed October 11, 2002. A response was filed December 11, 2002 with a one month extension of time. As such, the response was timely filed within the period for response.

Further, within the Notice of Nonresponsive, the Examiner never indicated that the language directed to the position of the mirror/reflector in claim 16, and now new claim 34, did not read on the elected Figure. The first mention was within the Notice of Abandonment. As such, the Applicant was never given an opportunity to rebut the position of the Examiner nor was this an issue to which the response could have been directed. As such, the reply filed December 11, 2002 was sufficiently responsive to the issues which has been raised.

It is noted with respect to claim 16 and 34, no support can be found within the elected species for the limitation of the mirror being positioned at the pupil plane of the objective lens.

With respect to claim 16, the Applicant alleges that the last three lines read on the elected species Figure 2 and directs the Examiner to page 8, lines 14-17 and lines 24-27 and further that the beamsplitter (18) performs these functions. The claim specifically recites "...a transmitted excitation beam and a fluorescence signal are reflected **but** the fluorescence signal is reimaged on the detector **while** the transmitted excitation beam is reflected back into itself exactly with respect to direction and phase front (emphasis added)." Directing attention to Figure 2, both the transmitted excitation beam and fluorescence signal are reflected by mirror (23); however, the specification is silent to the function of beamsplitter (18) and thus it is unclear whether the fluorescence is reflected thereby to the detector while the excitation beam is reflected back on itself.

A review of page 8, lines 14-17 reveals that the mirror (23) reflects back transmitted light. Page 8, lines 24-27 are directed to the curvature of mirror (23) for controlling the intensity of the fluorescent radiation on the detector. However, neither citation supports the beamsplitter (19) performing the functions claimed. It is noted that the beamsplitter of each species is indicated by a different reference number; as such, it cannot be assumed that the elements function the same.

In conclusion, the holding of the reply being insufficient is hereby reversed pursuant to MPEP 711.03(a); as such, the application was never abandoned. It is therefore appropriate to withdraw the Notice of Abandonment. No claims remain which are supported by the elected species. The application is being forwarded to the Examiner for issuance of a new Notice of Nonresponsive based thereon.



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